



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9980]

RIN 1545-BQ78

Preparer Tax Identification Number (PTIN) User Fee Update

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Interim final rule.

SUMMARY: This document contains interim final regulations relating to the imposition of certain user fees on tax return preparers. These regulations reduce the amount of the user fee to apply for or renew a preparer tax identification number (PTIN) and affect individuals who apply for or renew a PTIN. The Independent Offices Appropriation Act of 1952 authorizes the charging of user fees. The text of the interim final regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in this issue in the Proposed Rules section of this edition of the *Federal Register*.

DATES: *Effective date:* These regulations are effective on October 19, 2023.

Applicability date: For date of applicability, see paragraph (d) of these interim final regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the interim final regulations, Jamie Song at (202) 317-6845; concerning cost methodology, Michael A. Weber at (202) 803-9738 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains interim final amendments to 26 CFR part 300 regarding user fees.

A. User Fee Authority

The Independent Offices Appropriation Act of 1952 (IOAA), which is codified at 31 U.S.C. 9701, authorizes agencies to prescribe regulations that establish user fees for services provided by the agency. The IOAA provides that regulations implementing user fees are subject to policies prescribed by the President; these policies are set forth in the Office of Management and Budget Circular A-25, 58 FR 38142 (July 15, 1993) (OMB Circular A-25).

Under OMB Circular A-25, Federal agencies that provide services that confer benefits on identifiable recipients are to establish user fees that recover the full cost of providing the service. An agency that seeks to impose a user fee for government-provided services must calculate the full cost of providing those services. In general, a user fee should be set at an amount that allows the agency to recover the direct and indirect costs of providing the service, unless the Office of Management and Budget (OMB) grants an exception. OMB Circular A-25 provides that agencies are to review user fees biennially and update them as necessary.

B. PTIN Requirement

Section 6109(a)(4) of the Internal Revenue Code (Code) authorizes the Secretary of the Treasury or her delegate to prescribe regulations for the inclusion of a tax return preparer's identifying number on a return, statement, or other document required to be filed with the IRS. On September 30, 2010, the Treasury Department and the IRS published final regulations (TD 9501) under section 6109 in the *Federal Register* (75 FR 60309) to provide that, for returns or claims for refund filed after December 31, 2010, the identifying number of a tax return preparer is the individual's PTIN or such other number prescribed by the IRS in forms, instructions, or other

appropriate guidance. Those regulations require a tax return preparer who prepares or who assists in preparing all or substantially all of a tax return or claim for refund after December 31, 2010, to have a PTIN.

C. PTIN User Fee

Final regulations (TD 9503) published in the *Federal Register* (75 FR 60316) on September 30, 2010, established a \$50 user fee to apply for or renew a PTIN, based on a 2010 Cost Model. In addition, a \$14.25 fee for a new application and a \$13 fee for an application for renewal was payable directly to a third-party contractor.

In 2013, the IRS conducted a biennial review of the PTIN user fee and issued a new Cost Model that estimated an increase of the PTIN user fee, to \$54. However, the IRS determined to keep the fee at \$50 for the next two years.

In 2015, the IRS conducted a biennial review of the PTIN user fee and issued a new Cost Model, which determined that the full cost of administering the PTIN program going forward was reduced from \$50 to \$33 per application or application for renewal, plus a \$17 fee per application or application for renewal payable directly to a third-party contractor. Final regulations (TD 9781) published in the *Federal Register* (81 FR 52766) on August 10, 2016, superseded and adopted temporary regulations (TD 9742) published in the *Federal Register* (80 FR 66792) on October 30, 2015, and established the \$33 annual user fee to apply for or renew a PTIN, plus \$17 per application or application for renewal payable directly to a third-party contractor.

In 2017, the IRS again conducted a biennial review of the PTIN user fee and issued a new Cost Model, which determined that the amount of the fee going forward should be reduced to \$31 per application or application for renewal, plus an amount payable directly to a third-party contractor. However, on June 1, 2017, before a notice of proposed rulemaking proposing to reduce the amount of the PTIN user fee was issued, the IRS was enjoined from charging a PTIN user fee. In *Steele v. United States*,

260 F. Supp. 3d 52 (D.D.C. 2017), the United States District Court for the District of Columbia concluded that the Treasury Department and the IRS lacked the statutory authority to charge a PTIN user fee and enjoined the IRS from charging a PTIN user fee. See *Steele*, 2017 WL 3621747 (D.D.C. July 10, 2017) (final judgment and permanent injunction). The government filed an appeal and on March 1, 2019, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's decision and lifted the injunction against charging the PTIN user fee. See *Montrois v. United States*, 916 F.3d 1056 (D.C. Cir. 2019) (holding that a PTIN provides tax return preparers a specific benefit by allowing them to provide an identifying number that is not a social security number on returns they prepare and stating that the permissible amount of the fee would be the same regardless of whether the specific benefit was instead the ability to prepare tax returns for compensation). The case was remanded to the United States District Court for the District of Columbia to determine whether the fee amounts were excessive. *Id.* at 1068.

In 2019, the IRS again conducted a biennial review of the PTIN user fee and issued a new Cost Model, which determined that the amount of the fee going forward should be reduced to \$21 per application or application for renewal, plus a \$14.95 fee per application or application for renewal payable directly to a third-party contractor. Final regulations (TD 9903) published in the *Federal Register* (85 FR 43433) on July 17, 2020, adopted the proposed regulations (REG-117138-17) published in the *Federal Register* (85 FR 21126) on April 16, 2020, and established the \$21 annual user fee to apply for or renew a PTIN, plus \$14.95 per application or application for renewal payable directly to a third-party contractor.

In *Steele v. United States*, No. 1:14-cv-1523-RCL, --- F. Supp. 3d ----, 2023 WL 2139722 (Feb. 21, 2023), the United States District Court for the District of Columbia on remand considered whether the fee amounts were excessive under the IOAA.

Explaining that while an agency may charge only the reasonable cost incurred to provide a service, or the value of the service to the recipient, whichever is less, the district court allowed that the activities charged for need only be “reasonably related” to the cost to the agency and the value to the recipient, and the amount may include both “direct and indirect costs” associated with the service provided. 2023 WL 2139722, at *7. The court further noted that where an activity produces an independent public benefit, the fee that would otherwise be charged must be reduced by that portion of the costs attributable to the public benefit. *Id.*

The district court concluded that the PTIN fees for fiscal years (FYs) 2011 through 2017 were excessive to the extent they were based on: (1) the activities already conceded by the government in the case;¹ (2) any compliance activities other than direct and indirect costs of investigating ghost preparers who do not list their PTINs on returns they prepared for compensation as required by law, handling complaints regarding improper use of a PTIN, use of a compromised PTIN, or use of a PTIN obtained through identity theft, and composing the data to refer to those specific types of complaints to other IRS business units; (3) any suitability activities; (4) any support activities, other than those for the provision of PTINs and maintenance of the PTIN database, that facilitated provision of an independent benefit to the agency and the public; and (5) any activities of the third-party contractor, other than those related to the issuance, renewal, and maintenance of PTINs, that facilitated provision of an independent benefit to the agency and the public. *Id.* at *19.

¹ The government previously conceded \$26,576,661, \$26,623,420, and \$25,685,247 for amounts collected in FY 2011, FY 2012, and FY 2013, respectively, which related to certain communications, compliance, Office of Professional Responsibility (OPR), and operations support activities; \$8,737,123 and \$9,010,458 for amounts collected in FY 2014 and FY 2015, respectively, which related to certain communications, Office of the Director, Strategy and Finance, suitability, compliance and complaint referrals, competency and standards, continuing education, OPR, enrolled agent and enrolled retirement plan agent department, and contractor processing activities; and \$6,904,345 and \$6,784,762 for amounts collected in FY 2016 and FY 2017, respectively, which related to certain communications, Office of the Director, Strategy and Finance, suitability, compliance and complaint referrals, OPR, enrolled agent and enrolled retirement plan agent department, and contractor processing activities.

In accordance with the biennial review requirement in OMB Circular A-25 and taking into account the district court's February 2023 memorandum opinion in *Steele*, the IRS has issued a new Cost Model that re-determines costs that the government continues to incur for providing PTINs and administering the PTIN program, and re-calculates the amount of the user fee as \$11 per application or application for renewal, plus a \$8.75 fee per application or application for renewal payable directly to a third-party contractor. The amount payable directly to the third-party contractor also takes into account certain costs that were addressed by the district court's February 2023 memorandum opinion in *Steele*. Subsequently, the IRS entered into a modified contract that allows the government to pay those costs rather than the individuals who apply for or renew a PTIN.

The government is authorized to charge a PTIN user fee under the IOAA because, in exchange for the fee, it provides a service by issuing and maintaining PTINs, which provide tax return preparers a specific benefit by allowing them to provide an identifying number that is not a social security number on returns and claims for refund and to prepare returns and claims for refund for compensation. OMB Circular A-25 states that user fees should be collected in advance of or simultaneously with the provision of a service. The PTIN user fee is collected when tax return preparers apply for or renew their PTINs during the application season, which begins annually in October.

Explanation of Provisions

The IRS follows generally accepted accounting principles (GAAP) in calculating the full cost of administering PTIN applications and renewals. The Federal Accounting Standards Advisory Board (FASAB) is the body that establishes GAAP that apply for Federal reporting entities, such as the IRS. FASAB publishes the FASAB Handbook of Federal Accounting Standards and Other Pronouncements, as Amended (Current

Handbook), available at

https://files.fasab.gov/pdf/files/2022_%20FASAB_%20Handbook.pdf. The Current Handbook includes the *Statement of Federal Financial Accounting Standards (SFFAS) No. 4: Managerial Cost Accounting Standards and Concepts*. *SFFAS No. 4* establishes internal costing standards to accurately measure and manage the full cost of Federal programs, and the methodology below is in accordance with *SFFAS No. 4*.

1. Cost Estimation of Direct Labor

The IRS uses various cost-measurement techniques to estimate the cost attributable to the program. These techniques include using various timekeeping systems to measure the time required to accomplish activities, or using information provided by subject-matter experts on the time devoted to a program. To determine the labor and benefits cost incurred to provide the service of providing a PTIN, the IRS estimated the number of full-time employees required to conduct activities related to the costs of issuing and renewing PTINs. The number of full-time employees is based on both current employment numbers and future hiring estimates. When the indirect cost of a service or activity is not specifically identified from the cost accounting system, an overhead rate is added to the identifiable direct cost to arrive at full cost.

2. Overhead

Overhead is an indirect cost of operating an organization that is not specifically identifiable with an activity. Overhead includes costs of resources that are jointly or commonly consumed by one or more organizational unit's activities but are not specifically identifiable to a single activity. These costs can include:

- Financial, human resources, information technology, and general management and administrative.
- Rent and building.
- Procurement, other services, and consulting.

- Property, plant, and equipment.
- Publication services.
- Research, analytical, statistical, library and legal services.

To calculate the overhead allocable to a service, the IRS applies an overhead rate to the identified direct labor and benefits and other direct costs. The overhead rate is the ratio of the IRS's indirect labor, benefits, and non-labor costs of business divisions that do not interact with taxpayers to the labor and benefits costs of business divisions that interact with taxpayers. The IRS calculates an overhead rate annually. For the FY 2023 user fee review, an overhead rate of 62.5 percent was used.

3. Calculation of PTIN User Fee

The IRS used projections for FYs 2024 through 2026 to determine the direct and indirect costs associated with the PTIN program that are includible in the PTIN user fee calculation taking into account the district court's February 2023 memorandum opinion in *Steele*. Direct costs are incurred by the Return Preparer Office and include staffing and contract-related costs for activities, processes, and procedures related to administering the PTIN program. Staffing costs included in the PTIN user fee calculation relate to the compliance activities of investigating ghost preparers; handling complaints regarding the improper use of a PTIN, use of a compromised PTIN, or use of a PTIN obtained through identity theft; and composing the data to refer those specific types of complaints to other IRS business units. The PTIN user fee also takes into account indirect costs for support activities related to the provision of PTINs and maintenance of the PTIN database. In accordance with *Steele*, the PTIN user fee calculation does not take into account compliance costs other than those described in this paragraph, costs incurred by the Suitability Department, support costs other than those described in this paragraph, and costs previously conceded by the government in *Steele*, as detailed earlier in this preamble.

The labor and benefits for the work performed related to the PTIN program is projected to be \$16,536,827 in total over FYs 2024 through 2026. In addition to labor and benefits and overhead expenses, the IRS projects incurring travel, training, and supplies costs of \$115,000 in each of FYs 2024 through 2026. The total labor and benefits, travel, training, and supplies, and overhead expenses projected are shown below:

Expense	FY 2024	FY 2025	FY 2026	Total
Labor and benefits	\$5,364,566	\$5,510,939	\$5,661,322	\$16,536,827
Travel, training, and supplies	\$115,000	\$115,000	\$115,000	\$345,000
Overhead (62.5 percent)	\$3,424,729	\$3,516,212	\$3,610,201	\$10,551,142

The total cost for FYs 2024 through 2026 are therefore projected to be \$27,432,969. The number of users is based on FY 2022 numbers adjusted by a projected increase in applications over the next three FYs. Dividing this total cost by the projected population of users for FYs 2024 through 2026 results in a cost per application of \$11 as shown below:

Total Costs		\$27,432,969
Number of Applications	÷	<u>2,542,665</u>
Cost Per Application		<u>\$ 10.79</u>

Taking into account the full amount of these costs, the amount of the PTIN user fee per application or application for renewal is \$11.

Costs related to a third-party contractor's activities for the issuance, renewal, and maintenance of PTINs, such as processing applications and operating a call center, are included in the PTIN user fee calculation, in accordance with *Steele*, which will be set at \$8.75 per application or application for renewal, in addition to the amount charged by

the government. The third-party contractor was chosen through a competitive bidding process. The amount of the third-party contractor portion may change in 2026 when the contract expires and will be re-computed.

Special Analyses

I. Regulatory Planning and Review

The OMB's Office of Information and Regulatory Analysis has determined that these regulations are not significant and are not subject to review under section 6(b) of Executive Order 12866.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these interim final regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect all individuals who prepare or assist in preparing all or substantially all of a tax return or claim for refund for compensation. Only individuals, not businesses, can have a PTIN. Thus, the economic impact of these regulations on any small entity generally will be a result of an individual tax return preparer who is required to have a PTIN owning a small business or a small business otherwise employing an individual tax return preparer who is required to have a PTIN. The Treasury Department and the IRS estimate that approximately 847,555 individuals will apply annually for an initial or renewal PTIN. Although these regulations will likely affect a substantial number of small entities, the economic impact on those entities is not significant. These regulations will establish an \$11 fee per application or application for renewal (plus \$8.75 payable directly to the third-party contractor), which is a reduction from the previously established fee and will not have a significant economic impact on a small entity. Accordingly, the rule is not expected to have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These interim final regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

V. Good Cause

The annual PTIN application and renewal period for the 2024 filing season will begin shortly. It would be unnecessary and contrary to the public interest for the IRS to continue to charge the current, higher user fee pending public comment after the IRS has determined pursuant to the biennial review conducted under OMB Circular A-25 that the PTIN user fee should be reduced going forward. To enable the reduced fee amount to be in effect for PTINs issued or renewed by tax return preparers preparing returns or claims for refund in 2024, the Treasury Department and the IRS find that there is good cause to dispense with (1) notice and public comment pursuant to 5 U.S.C. 553(b) and (c) and (2) a delayed effective date pursuant to 5 U.S.C. 553(d). The

Treasury Department and the IRS will consider public comments submitted in response to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section of this issue of the *Federal Register* and will promulgate a final rule after considering those comments.

VI. Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, this Treasury decision has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Drafting Information

The principal author of these regulations is Jamie Song, Office of the Associate Chief Counsel (Procedure and Administration). Other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects in 26 CFR Part 300

Estate taxes, Excise taxes, Fees, Gift taxes, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

Paragraph 1. The authority citation for part 300 continues to read in part as follows:

Authority: 31 U.S.C. 9701.

Par. 2. Section 300.11 is amended by revising paragraphs (b) and (d) to read as follows:

§300.11 Fee for obtaining a preparer tax identification number.

* * * * *

(b) *Fee.* The fee to apply for or renew a preparer tax identification number is \$11 per year and is in addition to the fee charged by the contractor.

* * * * *

(d) *Applicability date.* This section applies to applications for or renewal of a preparer tax identification number filed on or after October 19, 2023.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

Approved: September 25, 2023.

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2023-22103 Filed: 9/29/2023 4:15 pm; Publication Date: 10/4/2023]